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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 289

JOSEPH MORRIS, FRANCIS J. BAILEY, ARTHUR P. LINDSEY, LESTER M. ANGLIN, JESSE J. WORD, EDWIN E. WILLIAMS, ALVIN J. PALMER, WILLIAM D. CROWELL, DAVID MOZEE, SAMUEL MOSELY, COLUMBUS C. BROOKS, JR.,

Petitioners,

vs.

RICHARD ATTREAU,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on March 21, 1966.

CITATIONS TO OPINIONS BELOW.

The opinion of the United States Court of Appeals, printed in Appendix A hereto, *infra* App. p. 13, is reported at 357 F. 2d 871.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 21, 1966. Rehearing was denied on April 19, 1966. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1). Although it might be argued that the ruling of the Court of Appeals is not "final" in the sense that the "cause is remanded to the district court for further proceedings in due course", this Court has taken jurisdiction in similar cases where the Court of Appeals has reversed a ruling of the District Court dismissing a complaint. *Land* v. *Dollar*, 330 U. S. 731, 734, n. 2 (1946); *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 685, n. 3 (1948). *Cf. Mills* v. *Alabama*, ... U. S. ..... (No. 597—October Term, 1965), decided on May 23, 1966 (34 LW 4418, 4419). The reasons given in the above cited cases for taking jurisdiction, namely a novel and important question of law, the avoidance of wasting time and energy of judiciary and the fairness to parties, are also present in the instant cause.

QUESTIONS PRESENTED.

1. Whether the federal civil rights act may be invoked to review the internal administrative policies of a metropolitan police department as they relate to individual members of the department?

2. Whether a false arrest in and of itself invokes federal civil rights act liability?

STATUTES INVOLVED.

The statute involved is 42 U. S. C., Section 1983. It is printed in Appendix B, *infra* App. p. 21.

STATEMENT.

Respondent is a Chicago police officer with the rank of patrolman. Petitioners were also police officers assigned to the "Internal Investigation Division" of the Chicago Police Department. App. p. 13.

The duties of the members of the Internal Investigation Division are correctly set forth by the United States Court of Appeals for the Seventh Circuit in *Magee* v. *Williams*, 329 F. 2d 470, 473 (7th Cir. 1964) as to partake in "investigation of members of the police department as a means of checking on the integrity and honesty of policemen only when cause exists therefor. . . ." The Seventh Circuit added (p. 475) that this plan "was to determine *which* police officers were dishonest. That determination would afford a basis for discharging such men. This plan obviously, if successful, would operate for the good of the public as well as every honest police officer."

Respondent's complaint set forth the unsupported conclusion that he was arrested by petitioners. It sets forth no facts supporting this conclusion. The only facts stated in the complaint pertaining to the alleged arrest are that on March 13, 1962, respondent was allegedly detained and questioned for a period of twelve hours by petitioners.

The essence of the complaint reads (App. pp. 14-15):

> (1) On March 13, 1962, defendants [petitioners] Morris, Bailey and Mozee arrested plaintiff [respondent] without a warrant or probable cause or other lawful authority and, with the cooperation of the other defendants, detained him for twelve hours at their unit headquarters. No charges were filed against plaintiff as a result of this arrest and detention.
>
> (2) During the arrest on March 13, 1962, defendants threatened to cause plaintiff's imprisonment and discharge from his employment.
>
> (3) On May 2, 1962, defendants were instrumental

in causing the return of an indictment in the Criminal Court of Cook County against plaintiff, based on perjured testimony, which indictment falsely charged plaintiff with the crime of "Official Misconduct."

(4) Defendants were also instrumental in causing the superintendent of police to file charges against plaintiff before the police board. These charges falsely accused plaintiff with violation of certain state criminal statutes and rules and regulations of the police department of the city.

(5) Defendants Morris, Bailey, Lindsey, Anglin, Word, Williams, Palmer, Mozee and Mosley caused plaintiff to be suspended from his position as a police officer from the day of his arrest, March 13, 1962, until April 11, 1963, when he was ultimately fully cleared by the police board and restored to duty.

At the time of the alleged arrest of respondent, Rule 298 of the Chicago Police Department was in effect, and provided (App. p. 18):

> "Although certain hours are allotted for the performance of regular duty assignments, a police officer is required to respond immediately to any police emergency regardless of when or where it may occur within the corporate boundaries of the City of Chicago and is subject to applicable provisions of the Rules and Regulations of the Department at all times."

General Order 16 (3) of the Chicago Police Department, also in effect on March 13, 1962, provided in part (App. p. 19):

> "all personnel of the Department will cooperate fully with the Internal Investigation Division staff, responding to requests for information, records, and reports."

On January 27, 1963, the criminal charges filed against respondent were dismissed. On April 11, 1963, the Police Board of the City of Chicago cleared respondent of the charges brought before it and restored him to duty. On March 21, 1966, a judgment order was entered in the case of

People ex rel Richard Attreau v. *Orlando W. Wilson, et al.*, Circuit Court of Cook County, Illinois case No. 65 L 20024, providing that the respondent recover *all pay* for the 13 month period of suspension (March 13, 1962 through April 11, 1963), less a two month period for which he signed written salary waivers. No appeal was taken from this court order awarding respondent back-salary for the period of his suspension.

On January 23, 1964, respondent filed his action under the federal civil rights act. The complaint was dismissed in the United States District Court for the Northern District of Illinois, Eastern Division, on February 5, 1965. The United States Court of Appeals for the Seventh Circuit in a 2-1 decision reversed the District Court ruling and remanded the cause for trial.

The opinion of the Court of Appeals was authored by Circuit Court Judge Elmer J. Schnackenberg and joined in by Circuit Court Judge Luther M. Swygert. However, Circuit Court Judge Win G. Knoch dissented, stating that he "would affirm the judgment of the trial court." App. p. 20.

REASONS FOR GRANTING THE WRIT.

1. The opinion of the Court of Appeals sets forth a new application of the federal civil rights act, i.e., to review the internal administrative and disciplinary procedures of a local police department. The opinion permits a police officer, who is dissatisfied with his superior's manner of supervising his activities, to invoke the federal civil rights act as a means of redress.

This application of the federal civil rights act poses an issue of national importance. The opinion affects the internal administrative structure and procedures of every metropolitan police department in the nation. It is one thing to hold police personnel accountable under the federal civil rights act for civil wrongs perpetrated under color of law against civilians. However, it is an entirely new and different proposition to hold that the federal civil rights act may be invoked by members of a police department who become dissatisfied with the lawful orders of their departmental superiors. The opinion stands for this latter proposition. This Court should take jurisdiction of this cause to resolve this important question of first impression and national importance.

In the case at bar, the complaint affirmatively shows that respondent was *not* arrested, but rather that he was obeying the lawful rules and regulations of the Chicago Police Department (Rule 298 and General Order No. 16 (3)) by appearing at Unit Headquarters and co-operating in a 12 hour investigation by the Internal Investigation Division. App. p. 14. Circuit Judge Knoch in his dissent correctly described respondent's alleged "arrest" as follows (App. p. 20):

> "Apart from plaintiff's conclusory statement that he was arrested, his complaint sets out only that plaintiff, a policeman, was detained by other 'police officers duly assigned * * * to the "Bureau of Inspection Service" and a sub-department thereof designated "Internal Investigation Unit" * * *' for a full 8-hour day plus 4 hours of overtime. In his brief, he says that this detention took place at unit headquarters. As a policeman, surely plaintiff was subject to supervision of his official activities."

The net result of the opinion of the Court of Appeals is to allow a police officer, who is held accountable by departmental rule to co-operate in a lawful investigation by the disciplinary unit of his department, to merely allege that this co-operation constituted an unlawful "arrest" and thereby become entitled to a civil rights act trial. Thus, the Court of Appeals would put the federal courts in the role of a super administrative reviewing tribunal required to "second guess" the internal disciplinary measures of the department. This federal "review" of the internal affairs of the Chicago Police Department would play havoc with the orderly disciplinary routine of the department and would undermine the supervisory control so necessary to the effective functioning of this quasi-military body. *Cf. Coane* v. *Geary,* 298 Ill. App. 199 (1939); *Martin* v. *Civil Service Commission,* 7 Ill. App. 2d 128 (1955). State law (Ill. Rev. Stat. 1965, ch. 24, pars. 3-7-3.1, 10-1-1 to 10-1-48), providing for civil service status, administrative review of department discipline by an independent Police Board, and State Court review of Police Board rulings, adequately protects an aggrieved officer from unwarranted action by the department. Internal departmental relations and supervision should not be clouded by threat of civil rights act liability. Such review of the internal affairs of the police department is not a proper application of the civil rights act as intended by Congress.

2. Assuming *arguendo* that respondent's voluntary cooperation with his superiors constitutes an "arrest", the opinion of the Court of Appeals is nevertheless erroneous in that it authorizes the federal civil rights act to be invoked in cases which amount to simple false arrest or malicious prosecution under State tort law. The Court of Appeals characterizes petitioners' contention that an "invalid arrest is not in and of itself a violation of the federal civil rights act" as an "abstract proposition" (App. p. 16). This reasoning is fallacious.

The opinion fails to cite what federal law or constitutional right, immunity or privilege respondent was deprived of by petitioners. The Fourteenth Amendment is the only constitutional reference in the opinion. But nowhere in the opinion is it shown how petitioners' actions were in violation of the Fourteenth Amendment. The only Federal law referred to in the opinion is 42 U. S. C., Section 1983 which affords redress for wrongs (but does not set forth substantial rights, privileges or immunities as such).

The opinion of the Court of Appeals attempted to rebut petitioners' contentions and distinguished the cases presented to it by petitioners, but cited no case or precedent for the decision. The reason is obvious. *There is no precedent for the Court of Appeals decision.* The precedent is to the contrary.

The essence of the complaint is a charge of false arrest. In his brief and argument before the Court of Appeals, respondent cited the landmark case of *Monroe* v. *Pape*, 365 U. S. 167 (1961), as precedent for granting him relief under the federal civil rights act.

In *Monroe*, the complaint alleged (p. 169):

> "That 13 Chicago police officers broke into petitioners' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked

> every room, emptying drawers and ripping mattress covers. It further alleges that Mr. Monroe was then taken to the police station and detained on 'open' charges for 10 hours, while he was interrogated about a two-day-old murder, that he was not taken before a magistrate, though one was accessible, that he was not permitted to call his family or attorney, *that he was subsequently released without criminal charges being preferred against him.* It is alleged that the officers had no search warrant and no arrest warrant and that they acted 'under color of the statutes, ordinances, regulations, customs and usages' of Illinois and of the City of Chicago." (Emphasis added.)

The United States Supreme Court held that this *totality of action as alleged in the complaint* stated a cause of action. There is no statement in *Monroe* that an unlawful arrest in itself *ipso facto* creates federal civil rights act liability.

The constitutional wrong in *Monroe* was an unreasonable search and seizure. This Court stated the basis for the *Monroe* decision succinctly (p. 171):

> "Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirement of RS § 1979. See *Douglas* v. *Jeannette,* 319 U. S. 157, 161, 162, 87 L. ed. 1324, 1327, 1328, 63 S. Ct. 877, 882. So far petitioners are on solid ground. For the guarantee against unreasonable searches and seizures contained in the Fourth Amendment has been made applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment."

In *Agnew* v. *City of Compton,* 239 F. 2d 226 (9th Cir. 1957) (overruled on other grounds in *Cohen* v. *Norris,* 300 F. 2d 24 (9th Cir. 1962)), the Court decided this same issue adversely to the position of respondent herein. The contents of the *Agnew* complaint are described by the court as follows (pp. 228-229):

"It is alleged in the complaint that, acting without a warrant, the two police officers entered Agnew's premises, arrested him, seized some of his property, and transported him to jail in a police vehicle. When arrested, Agnew was peaceably conducting an auction of his own property as an isolated transaction. At the jail, he was charged with engaging in the business of auctioneering without a city permit. He was also charged with engaging in the business of electrical contracting without a city license.

"Agnew was then subjected to the usual routine of photographing and fingerprinting, after which he was released on two-hundred-dollar bail. Two days later, the charges were dismissed by the Compton municipal court. The electrical inspector, however, still refuses to issue electrical permits to Agnew for installations in Compton, unless he first secures a city electrical contracting license. The city and the inspector also threaten to arrest Agnew if he engages in that business in Compton without such license.

"It is alleged that the acts complained of were committed wrongfully, maliciously, and while acting under color of the police power of the city. It is further alleged that these acts were committed as a part of a conspiracy among appellees to deprive appellant of numerous federal rights secured by the Constitution and federal statutes."

In *Agnew,* just as in the instant cause, the essence of the complaint was that respondent was erroneously arrested. In dismissing the complaint, the court held (p. 229):

"No one has a constitutional right to be free from a law officer's honest misunderstanding of the law or facts in making an arrest."

The question of whether a false arrest in and of itself invokes federal civil rights act liability is a question of first impression before this Court. It was a question of first impression before the court below. However, the Court of Appeals chose not to meet the challenge of deciding it

squarely. The question of whether or not a false arrest or a malicious prosecution action in and of itself warrants federal civil rights act liability is of too great an importance to be ignored as it was by the Court of Appeals.

To allow respondent's contention that a single allegation of erroneous arrest or prosecution in itself states a valid claim under the civil rights act would afford federal court jurisdiction for the trial of every common law action for false arrest or malicious prosecution. Certainly it was not the intent of Congress that every tort action under State law committed by a police officer should be compensable under the civil rights act. For example, every time a State police officer physically interferes with the free travel of a citizen even for moments and even under suspicious circumstances, an arrest occurs. See, e.g., 6 C. J. S. Arrest § 1 (1937) and the cases cited thereunder. Clearly, as shown above, this is not the purpose of the civil rights act as intended by Congress.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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